

Chapter 463-30 WAC

PROCEDURE--ADJUDICATIVE PROCEEDINGS

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-30-040	Hearing examiner designation. [Order 109, § 463-30-040, filed 11/16/76.] Repealed by 82-10-027 (Order 82-2), filed 4/30/82. Statutory Authority: RCW 80.50.040(1).
463-30-070	Pleadings--Legibility. [Order 109, § 463-30-070, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-110	Notice and opportunity to be heard--Time. [Order 109, § 463-30-110, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-130	Service--Upon whom served. [Order 109, § 463-30-130, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-140	Waiver of service--Filing. [Order 109, § 463-30-140, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-150	Service--Method of service. [Order 109, § 463-30-150, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-160	Service--When service complete. [Order 109, § 463-30-160, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
463-30-170	Proof of service--Filing with council. [Order 109, § 463-30-170, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory

- Authority: RCW 80.50.040.
- 463-30-180 Proof of service--Method. [Order 109, § 463-30-180, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-210 Depositions and interrogatories--Practice. [Order 109, § 463-30-210, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-220 Request for production. [Order 109, § 463-30-220, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-260 Definition of issues before hearing. [Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-260, filed 12/22/82; Order 109, § 463-30-260, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-290 Prehearing conference record of action. [Order 109, § 463-30-290, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-295 Orders regarding procedure, scheduling and substantive issues. [Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-295, filed 12/22/82.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-340 Proposed order--Contents of exceptions. [Order 109, § 463-30-340, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-350 Replies to exceptions. [Order 109, § 463-30-350, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-360 Replies to exceptions--Contents. [Order 109, § 463-30-360, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-370 Exceptions and replies to exceptions--Briefs and arguments. [Order 109, § 463-30-370, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.
- 463-30-380 Adoption of proposed order. [Order 109, § 463-30-380, filed 11/16/76.] Repealed by 90-05-018, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040.

WAC 463-30-010 Purpose~~((and scope of this chapter))~~. The purpose of this chapter is to set forth procedures by which adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter 10-08 WAC shall not apply to adjudicative proceedings before the council.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-010, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-010, filed 11/16/76.]

WAC 463-30-020 Council conducted hearings and administrative law judges. The council may conduct adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW or it may utilize an administrative law judge provided by the office of administrative hearings pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-020, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-020, filed 4/30/82; Order 109, § 463-30-020, filed 11/16/76.]

WAC 463-30-030 Use of the term "council." The term "council," for purpose of this chapter, shall refer to the members of the energy facility site evaluation council as constituted by law, or a panel of such members.

[Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-030, filed 4/30/82; Order 109, § 463-30-030, filed 11/16/76.]

WAC 463-30-050 Status of agencies and agency members in adjudicative proceedings. All state agencies having members on the council are deemed to be parties to any adjudicative proceeding before the council. For purposes of any adjudicative proceeding, however, the agency representative on the council shall be deemed to be a member of the council and not a member of the agency. It shall be proper for the agency representative on the council to communicate with employees of the represented agency, excepting those agency employees who have participated in the proceeding in any manner or who are otherwise disqualified by RCW 34.05.455.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-050, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-050, filed 11/16/76.]

~~((WAC 463-30-055 Applicant funding of council members salaries and fringe benefits for extended adjudications. When more than ten days of adjudicative hearings will be necessary to review an application for site certification, it shall be the responsibility of the applicant for site certification to pay the normal salary and fringe benefits expenses of such members of the council for the period in excess of ten days that they spend in adjudicative hearings. For the purposes of this rule, time spent in preparation for adjudicative hearings shall not be considered. Such salary and fringe benefits expenses for designated council members shall be considered to be part of the council's normal expenses pursuant to RCW 80.50.071 (1)(b)).~~

~~[Statutory Authority: RCW 80.50.040. 93-12-013, § 463-30-055, filed 5/20/93, effective 6/20/93.]]~~

WAC 463-30-060 Definitions--Persons and parties. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

1. The "applicant" as defined in RCW 80.50.020(1).
2. Each "member agency" as defined in RCW 80.50.030(3).
3. The "counsel for the environment" as defined in RCW 80.50.020(12).
4. Each person admitted to an adjudicative proceeding as an "intervenor," is a party only for the purposes and subject to any limitations and conditions specified in the council order granting intervention.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-060, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-060, filed 11/16/76.]

WAC 463-30-080 Commencement of adjudicative proceedings. Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

1. Upon the record without further written notice to the parties; or
2. By letter from the ~~((EFSEC))~~-Council manager; or
3. By letter from the presiding officer.

In such instances, twenty days' prior notice is not required.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, § 463-30-080, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-080, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1). 81-07-019 (Order 81-1), § 463-30-080, filed

WAC 463-30-085 Provisions regarding limited English-speaking and hearing impaired persons. Provisions in WAC 10-08-040 (2) and (3)(c), 10-08-045, 10-08-150, and 10-08-160(2) relating to procedures involving limited English-speaking or hearing impaired persons are incorporated in these rules by this reference.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-085, filed 2/13/90, effective 3/16/90.]

WAC 463-30-090 Publicity--Commencement of adjudicative proceedings. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC 463-30-400.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-090, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-090, filed 11/16/76.]

WAC 463-30-100 Appearance and practice before the council.

1. General. In all proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on a record subject to review by the courts, the following persons may appear in a representative capacity:
 - a. Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;
 - b. Attorneys at law duly qualified and entitled to practice before the highest court of any other state;
 - c. Upon permission of the presiding officer, an officer or employee of a party or person seeking party status.

The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

2. Notices of appearance and withdrawal of attorneys. Attorneys or other authorized representatives appearing on behalf of a party or withdrawing from a proceeding shall immediately so notify the council and all parties to the proceeding.
3. Unethical conduct. All persons appearing in proceedings before the council in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to these standards, the council may decline to permit the person to appear in a representative capacity in any proceeding before the council.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-100, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-100, filed 11/16/76.]

WAC 463-30-120 Filing and service.

1. Filing. In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council. Filing of any document shall be deemed complete only upon receipt by the EFSEC manager or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. ((Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies))Under unforeseen circumstances, a party may request and the council manager may grant authority to file a document by facsimile or by

electronic transmission. If a document is filed by facsimile, the council must receive the required number of copies on the following business day. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

- a. Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.
 - b. Other pleadings. All pleadings, stipulations, briefs, motions, settlement agreements, ~~((and-))~~prefiled evidence, and exhibits shall be legible and a copy shall be served upon each party to the proceeding.
2. Service.
- a. Service by parties.
 - i. Service of pleadings, stipulations, briefs, motions, settlement agreements, exhibits and prefiled evidence by parties shall be made by delivering one copy to each party in person, by mail, properly addressed with postage prepaid, or by commercial parcel delivery company properly tendered with fees prepaid, ~~((or by tele))~~. If authorized by the council manager, pleadings, stipulations, briefs, motions, settlement agreements, prefiled evidence and exhibits not exceeding twenty five (25) pages may be served by facsimile transmission, where originals are mailed simultaneously. Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party of all future pleadings before the council.
 - ii. Service of pleadings by mail shall be complete ~~((when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.))~~ upon:
 1. deposit in the mail or accepted for delivery by a commercial parcel delivery company, or
 2. successful transmi~~((ted))~~ssion by facsimile, if authorized, provided the document is deposited in the mail on the date of the facsimile, or
 3. sending by electronic mail to parties who have specifically waived their rights to other forms of service and who specifically accept service by electronic mail.
 - iii. Electronic Mail Waiver. A party may expressly allow service upon it by electronic mail through a waiver of the statutory service requirements. A party may make a waiver as to all other parties, a limited waiver as to certain parties, or a mutual waiver by stipulation with another party. To make a waiver, a party shall file a one-page pleading stating that it "waives the protections afforded by RCW 34.05.010(18) and WAC 463-30-120," and that "service upon it by delivery, United States mail, commercial parcel delivery, and/or facsimile is unnecessary, " and that it "expressly authorizes service upon it by electronic mail."
 - iv. Serving by Electronic Mail. When a party serves a pleading by electronic mail upon another party who has filed such a waiver, the serving party shall on the same date file and serve upon the receiving party by method other than electronic mail a one-page "notice of service by electronic mail" which describes with particularity the document or pleading which was served by electronic mail. The receiving party shall, within five (5) days of service of the aforesaid notice, file and serve by method other than electronic mail a one-page response denominated either "confirmation of receipt of electronic mail" or "notice of non-receipt of electronic mail" specifically acknowledging and confirming receipt or~~((f))~~ denying same.
 - b. Service by the council. All notices, findings of fact, decisions, and orders required to be served by the council may be served in person, by mail, by commercial parcel delivery company, properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously. Service of documents shall be complete when a true

copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company.

- c. Certificate of service. There shall appear on the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120 (2)(a).

Dated at this day of

(signature)

3. Courtesy Copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.
4. Timing of Filing and Service. Filing and service shall occur on the same date.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, §463-30-120, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, §463-30-120, filed 2/13/90, effective 3/16/90; Order 109, §463-30-120, filed 11/16/76.]

WAC 463-30-190 Discovery practice. Discovery is available when permitted by the presiding officer and shall be conducted in accordance with RCW 34.05.446.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-190, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-190, filed 11/16/76.]

WAC 463-30-200 Subpoenas--Practice.

1. Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.
2. Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.
3. A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.
4. The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:
 - a. Quash or modify the subpoena if it is unreasonable and oppressive; or
 - b. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.
5. No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff in any proceeding before the council.
6. The council shall only be responsible for paying the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-200, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-200, filed 11/16/76.]

WAC 463-30-230 Official notice.

1. Upon written or oral motion the council may officially notice:
 - a. Any judicially cognizable facts;
 - b. Technical or scientific facts within the council's specialized knowledge; and
 - c. Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.
2. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed.
3. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-230, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-230, filed 11/16/76.]

WAC 463-30-240 Official notice--Evaluation of evidence. WAC 463-30-230 shall not be construed to preclude the council from utilizing its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-240, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-240, filed 11/16/76.]

WAC 463-30-250 Stipulations ((and settlement))of facts. ~~(((1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.~~

~~————(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the council.))~~A stipulation is an agreement among parties intended to establish one or more operative facts in an adjudicative proceeding. The council encourages parties to enter stipulations of fact. The parties to an adjudicative proceeding before the council may agree to all of the facts or any portion of the facts involved in the proceeding. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the council, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The council may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

[Statutory Authority: RCW 80.50.040. 90-05-018, §463-30-250, filed 2/13/90, effective 3/16/90; Order 109, §463-30-250, filed 11/16/76.]

NEW SECTION

WAC 463-30-251 Alternative dispute resolution. The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

1. Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. ~~((the))~~The council may assign a mediator or facilitator to assist the parties. The council may

also assign an arbitrator whose decision is subject to council review.

2. Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.
3. Collaborative.
 - a. Defined; membership. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.
 - b. Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third party neutral in the collaborative, or through the council manager, subject to agreement among the participants to the form and substance of any such communication.
4. ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:
 - a. The parties, as their first joint act, will consider any guidelines or directions by the council, and determine the ground rules governing the negotiations;
 - b. No statement, admission or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the council without the consent of the participants or unless necessary to address the process of the negotiations;
 - c. To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and
 - d. Participants in a council-sanctioned ADR process must periodically advise any non-participating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council ~~((id-))~~if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

NEW SECTION

WAC 463-30-253 Settlement. A settlement is an agreement among two or more parties. Applicants, member agencies, and the counsel for the environment may enter into a settlement concerning any matter. Intervenor may enter into a settlement agreement subject to any limits and conditions specified in the council's order granting intervention. Settlements are filed with the council as a proposed resolution of the issues addressed in the agreement.

1. Full settlement. An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for council review.
2. Partial settlement. An agreement of all parties on fewer than all issues in a proceeding may be presented as a partial settlement for council review, and remaining matters may be litigated.
3. Multiparty settlement. An agreement of some, but not all parties on one or more issues may be offered as their position in the ~~((proeessing))~~proceeding along with the evidence that they believe supports it.
4. Notice to council. Parties must advise the council if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 463-30-xx4. The council will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 463-30-xx4.

NEW SECTION

WAC 463-30-254 Settlement consideration procedure. The council must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of their settlement presentation to the council.

1. Settlement presentation timing. Parties must file a proposed settlement that allows the council sufficient time for the filing, review, and approval of any filing.
2. Settlement presentation contents. When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the council that the proposal is appropriate for adoption.
 - a. Supporting documentation should include supporting evidence; a narrative outlining the scope of the settlement and its principal aspects; a statement explaining in detail why the proposal is appropriate for adoption~~((?))~~—a summary of its costs and benefits; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting prefiled testimony, brief, or other form that serves the same functions.
 - b. Parties must make a brief presentation to the council concerning the proposed settlement and address any legal or factual matters associated with it. Each party to the settlement agreement must offer to present one or more witnesses to testify in support of the proposal and to answer questions. In the case of a contested settlement, parties opposed to the council's adoption of the proposal may offer to present one or more witnesses to testify or argue against the proposal.

NEW SECTION

WAC 463-30-255 Council discretion to accept or reject a proposed settlement or other agreement. The council will not delegate to parties the power to make final decisions. The council retains the right to exercise its authority in every adjudicative proceeding to consider any proposed settlement or other agreement of the parties. The council may decide whether or not to consider a proposed settlement or agreement. If the council considers a proposed settlement or agreement, the council may accept it, reject it, or take any other action the council deems appropriate.

WAC 463-30-270 Prehearing conference.

1. The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:
 - a. Simplification of issues;
 - b. The necessity or desirability of amendments to the pleadings;
 - c. The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
 - d. Limitations on the number and consolidation of the examination of witnesses;
 - e. Procedural matters;
 - f. Distribution of written testimony and exhibits to the parties prior to the hearing;
 - g. The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-400 may be ruled upon at a prehearing conference;
 - h. Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.
2. Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.
3. Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

4. In any proceeding the presiding officer may, at his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.
5. Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-270, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-270, filed 11/16/76.]

WAC 463-30-280 Attendance by council members at prehearing conferences. Individual council members may be present and participate in prehearing conferences.

[Statutory Authority: RCW 80.50.040(1). 83-01-126 (Order 82-4), § 463-30-280, filed 12/22/82; Order 109, § 463-30-280, filed 11/16/76.]

WAC 463-30-300 Hearing schedule guidelines. In any adjudicative site certification proceeding the council shall, after consultation with the parties, schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

1. The description of the particular energy facility and the proposed site.
2. Consistency of the proposal with zoning and land use regulations.
3. Physical site suitability and related safety considerations.
4. National Pollution Discharge Elimination System (NPDES), Prevention of Significant Deterioration (PSD), or other permits.
5. On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
6. On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.
7. Peripheral area impacts (all categories).
8. Adverse impacts minimization and consideration of conditions of certification.

At the commencement of the hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. The council may alter the schedule.

[Statutory Authority: RCW 34.05.250. 98-01-083, § 463-30-300, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-300, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-300, filed 11/16/76.]

WAC 463-30-310 Rules of evidence.

1. All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.
2. Where practicable, the presiding officer may order:
 - a. That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;
 - b. That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;
 - c. That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.
3. When portions only of a document are to be relied upon, the offering party shall identify the pertinent

excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

4. No former employee of the council shall appear, except with the permission of the council, as an expert witness on behalf of other parties in a proceeding in which the former employee participated.
5. The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be grounds for striking all testimony of the witness.
6. Any party bound by stipulation or admission of record may, at any time prior to closure of the record, be permitted to withdraw its agreement in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-310, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-310, filed 11/16/76.]

WAC 463-30-320 Entry of initial and final orders. Every decision and order whether initial or final shall:

1. Be correctly captioned to identify the council and name of the proceeding;
2. Identify all parties and representatives participating in the proceeding;
3. Include a concise statement on the nature and background of the proceeding;
4. Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;
5. Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;
6. Contain an initial or final order disposing of all contested issues;
7. If applicable, contain a statement describing the parties' rights to reconsideration or other administrative relief.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-320, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1). 82-10-027 (Order 82-2), § 463-30-320, filed 4/30/82; Order 109, § 463-30-320, filed 11/16/76.]

WAC 463-30-330 Petition for review and replies.

1. Any party to an adjudicative proceeding may file a petition for review of an initial order.
2. The petition for review shall be filed with the EFSEC manager within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.
3. The petition for review shall specify the challenged portions of the initial order and shall refer to the evidence of record which is relied upon to support the petition.
4. Any party may file an answer to a petition for review. The answer shall be filed with the ~~((EFSEC))~~council manager within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, § 463-30-330, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-330, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-330, filed 11/16/76.]

WAC 463-30-335 Petition for Reconsideration of final order. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the ~~((EFSEC))~~Council manager.

[Statutory Authority: RCW 80.50.040(1) and 34.05.250. 98-01-084, § 463-30-335, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-335, filed 2/13/90, effective 3/16/90.]

WAC 463-30-390 Recommendation--Transmittal to governor. Upon the adoption by the council of its recommendations as to the approval or disapproval of an application for certification, the council shall forward such recommendations to the governor.

[Order 109, § 463-30-390, filed 11/16/76.]

WAC 463-30-400 Intervention. On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

[Statutory Authority: RCW 80.50.040(1). 81-20-028 (Order 81-4), § 463-30-400, filed 9/30/81; Order 109, § 463-30-400, filed 11/16/76.]

WAC 463-30-410 Participation by intervenor. In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-410, filed 2/13/90, effective 3/16/90; Order 109, § 463-30-410, filed 11/16/76.]

WAC 463-30-420 Participation by county, city and port district representatives. In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

[Statutory Authority: RCW 80.50.040. 90-05-018, § 463-30-420, filed 2/13/90, effective 3/16/90. Statutory Authority: RCW 80.50.040(1). 78-09-082 (Order 78-9), § 463-30-420, filed 8/28/78; Order 109, § 463-30-420, filed 11/16/76.]